

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

---

UNITED STATES OF AMERICA,

v.

ORDER  
06-CR-47A

JOHN R. ELSBERRY, JR.,

Defendant.

---

---

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1)(A), on February 3, 2006. On July 18, 2006, defendant filed a motion for various relief, including suppression of evidence seized pursuant to a search warrant, suppression of evidence seized pursuant to a search by the United States Probation Office, suppression of statements made by him to law enforcement officers, and severance of Count 1 from Counts 2 and 3 of the indictment. On May 29, 2007, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendant's motion to suppress be denied in its entirety and that the motion for severance be granted.

Defendant filed objections to the Report and Recommendation on July 18, 2007, and the government filed a response thereto on August 17, 2007. Following several adjournments for purposes of plea discussions, oral argument on the objections was held on November 19 and December 5, 2008.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the Court: (1) denies defendant's motion to suppress in its entirety; and (2) grants defendant's motion for severance of Count 1 from Counts 2 and 3.

Counsel shall appear on January 12, 2009, at 12:30 p.m., to set a date for trial.

SO ORDERED.

*s/l Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: January 8, 2009